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No. 90-6531

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1991

KEITH HUDSON,

Petitioner,

v.

JACK MCMILLIAN, MARVIN WOODS, AND ARTHUR MEZO,

Respondents.

On Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

BRIEF *AMICI CURIAE* FOR THE STATES OF TEXAS, HAWAII, NEVADA, WYOMING, AND FLORIDA

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QUESTION PRESENTED

Did the Fifth Circuit apply the correct legal test when determining that petitioner's claim that his eighth amendment rights under the cruel and unusual punishment clause were not violated as a result of a single incident use of force by the respondents which did not cause a significant injury?

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BRIEF *AMICI CURIAE* FOR THE STATES OF TEXAS, HAWAII, NEVADA, AND WYOMING

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COME the States of Texas, Hawaii, Nevada, and Wyoming, *Amici Curiae* herein, and file this brief.

INTEREST OF THE *AMICI CURIAE*

The *amici* states have the responsibility for managing prison populations of convicted felons. The various attorneys general provide legal representation to correctional officials who are sued by prison inmates for violation of their civil rights under the Constitution. The particular legal standard at issue in this case arose out of an incident occurring in a Texas prison. *See Huguet v. Barnett*, 900 F.2d 838 (5th Cir. 1990). The *amici* states submit their brief *amici curiae* in support of respondents and ask this Court to affirm the holding of the court of appeals.

SUMMARY OF ARGUMENT

When a prisoner brings a claim for an excessive use of force by a correctional officer, the eighth amendment provides the substantive source of protection. An eighth amendment claim has two separate and distinct inquiries it must answer: whether there is a sufficiently serious deprivation and whether there is a sufficiently culpable state of mind on the part of the government official. The Fifth Circuit's test in *Huguet v. Barnett*, 900 F.2d 838 (5th Cir. 1990) aptly requires both inquiries. The threshold inquiry of whether there was a serious deprivation is a separate and distinct test from the ultimate inquiry of whether there was an unnecessary and wanton infliction of pain. A plaintiff must overcome the threshold requirement before addressing the ultimate state of mind inquiry.

The eighth amendment protects convicted felons only against cruel and unusual punishments. To remove the significant injury requirement of the Fifth Circuit test for a single incident use of force would expand the scope of coverage of the eighth amendment

to raise ordinary common law torts to the level of a constitutional violation. Every use of force in prison would be actionable under 42 U.S.C. § 1983, regardless of the amount of harm caused.

The significant injury element of the Fifth Circuit test is part of the eighth amendment's threshold test which requires objectively significant harm. The test is specifically designed to address the type of case here at issue: a spontaneous single incident use of force by a state correctional officer on an inmate. Based on *Estelle v. Gamble*, 429 U.S. 102 (1976), and its requirement of a serious illness or serious medical need in an eighth amendment medical claim, a claim of an excessive use of force should similarly require a significant deprivation.

In this case, the court of appeals properly dismissed petitioner's claim because the trial court found petitioner's injuries to be minor and therefore not significant. Petitioner admits that *de minimis* injury does not state a claim under the eighth amendment, but would have this court find that his minor injuries were significant as a matter of law. The court of appeals, based on the trial court's finding, properly determined that the harm to petitioner was not sufficiently serious to constitute cruel and unusual punishment under the eighth amendment.

ARGUMENT

This case presents the question whether a convicted prisoner must show a constitutionally significant injury when claiming that his eighth amendment rights under the cruel and unusual punishments clause were violated by a single incident use of force by a prison guard. Petitioner, Keith J. Hudson, alleges that the respondent correctional

officers used excessive force on him during an incident at Camp J of the Louisiana State Penitentiary in Angola, Louisiana, on October 30, 1983. The eighth amendment provides the substantive source of constitutional protection for convicted prisoners in the prison security context. *Graham v. Conner*, ___ U.S. ___, 109 S. Ct. 1865, 1870-71 (1989) (in analyzing a claim of physically intrusive governmental conduct, the courts must look to the "explicit textual source of constitutional protection."). When the deliberate use of force is challenged as excessive and unjustified, "the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 106 S. Ct. 1078, 1085 (1986), *citing Johnson v. Glick*, 481 F.2d 1028 (2nd Cir.), *cert. denied sub nom. John v. Johnson*, 414 U.S. 1033 (1973).

A valid eighth amendment claim depends upon bifurcated components: a sufficiently serious deprivation and a sufficiently culpable state of mind on the part of state officials. *Wilson v. Seiter*, 111 S. Ct. 2321, 2324 (1991), *citing to Whitley, supra and Rhodes v. Chapman*, 452 U.S. 337 (1981). The threshold test of an eighth amendment claim is the first, objective component. *Wilson*, 111 S. Ct. at 2326. The Fifth Circuit legal standard under scrutiny, which requires that each element of the standard be separately proven, begins with this component:

1. [A] significant injury, which
2. resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was
3. objectively unreasonable, and

4. the action constituted an unnecessary and wanton infliction of pain.

Huguet v. Barnett, 900 F.2d 838, 841 (5th Cir. 1990).

Thus, unless a plaintiff establishes that he has sustained a constitutionally significant injury, he fails to state a claim under the eighth amendment. The Fifth Circuit directs that the first three elements must be examined separately and objectively. It is only after a plaintiff proves the first three elements that the court will examine the fourth, subjective element. *Id.* This standard is entirely consonant with the Supreme Court's most recent explanation of eighth amendment requirements, *Wilson*, *supra*, and with the history of the eighth amendment in the Supreme Court.

I. TO REMOVE THE REQUIREMENT OF A CONSTITUTIONALLY SIGNIFICANT INJURY FROM THE LEGAL STANDARD FOR AN EXCESSIVE USE OF FORCE CLAIM WOULD EXPAND THE COVERAGE OF THE EIGHTH AMENDMENT.

The eighth amendment simply mandates that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. While these words first appeared in the English Bill of Rights of 1689,[1] by the time the framers met to consider the United States Constitution and throughout the eighteenth and nineteenth centuries, the phrase "cruel and unusual

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[1] Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 CALIF. L. REV. 839, 840 (1969).

punishments" was interpreted to prohibit "tortures" and "barbarous" punishments.[2]

A. The First Expansions Of Eighth Amendment Coverage Focused On The Sentence And The Criminal Act.

The Supreme Court did not expand its view of the cruel and unusual punishments clause until the early twentieth century in *Weems v. United States*, 217 U.S. 349, 30 S. Ct. 544 (1910), where the court found that the sentence imposed on a particular prisoner was grossly disproportionate to the crime committed.[3] *See also Trop v. Dulles*, 356 U.S. 86, 78 S. Ct. 590 (1958) (sentence of denationalization held to be cruel and unusual because statelessness effectively deprives a

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[2] *Id.*, at 842; *see also Estelle v. Gamble*, 429 U.S. 97, 102, 97 S. Ct. 285, 290 (1976).

[3] In *Weems*, an official was convicted of falsification of an official document and was sentenced to 15 years at hard labor. The official had falsified a single item of a public account. The statute under which the official was convicted contained no intent requirement and no variations in the sentencing structure, so the official was held strictly liable. The Supreme Court, in holding that the length and severity of the sentence were cruel and unusual punishment, stated:

> The highest punishment possible for a crime which may cause the loss of many thousands of dollars, and to prevent which the duty of the state should be as eager to prevent the perversion of the truth in a public document, is not greater than that which may be imposed for falsifying a single item of a public account. And this contrast shows more than different exercises of legislative judgment. It is greater than that. It condemns the sentence in this case as cruel and unusual.

Weems, 30 S. Ct. at 554.

person of all rights -- "total destruction of the individual's status in organized society.") In *Trop*, the court acknowledged that the eighth amendment protects against more than physical mistreatment and physical torture -- "the amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Id.* at 101. The basis for the holding in *Trop* did not directly rest upon the proportionality concept of *Weems*, but upon the fact that the punishment of denationalization for any crime was so egregious that it did not fit into a civilized concept of modern society.[4]

The court next focused on a "crime" for which any punishment would be cruel and unusual in *Robinson v. California*, 370 U.S. 661 (1962). The petitioner in *Robinson* had been convicted for the crime of being a drug addict. The court compared criminalizing the status of being a drug addict to criminalizing the status of having the common cold. While neither status may be desirable, criminalizing a status having nothing to do with a volitional act was found to be an infliction of cruel and unusual punishment.

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[4] While the concept of proportionality was not the basis of the holding, it must have at least influenced the court. The particular crime at issue was the escape of a soldier from an Army stockade and the soldier's desertion for one day in 1944. The military court sentenced the soldier to three years at hard labor, forfeiture of all pay, and a dishonorable discharge. Under a separate federal statute, he lost his citizenship because of his dishonorable discharge and conviction for wartime desertion.

B. The Second Major Expansion Of Eighth Amendment Coverage Included Conditions Of Confinement Outside The Specific Sentence.

Conditions of confinement fall within the scope of the cruel and unusual punishments clause because the government has the obligation to provide to those it punishes by incarceration at least the minimal civilized measure of life's necessities. For instance, deliberate indifference to an inmate's serious medical needs in the worst case scenario may result in "torture or a lingering death," and "in less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose." *Estelle v. Gamble*, 429 U.S. 102, 103 (1976). There has never been any question, however, that anything less than a serious deprivation fails to rise to the level of a violation of the cruel and unusual punishments clause. The court in *Rhodes v. Chapman*, 452 U.S. 311, 347 (1981) explained that conditions of confinement may constitutionally be "restrictive and even harsh" because "they are part of the penalty that criminal offenders pay for their offenses against society." The constitutional limitation is that the conditions may not be cruel and unusual. Anything less should be dealt with under state law, as contemplated by *Estelle*.

The Supreme Court in *Estelle* extended the eighth amendment's protection from cruel and unusual punishments to an inmate's serious medical needs. A valid medical claim under the eighth amendment requires a "serious illness or injury" and allegations that an official's acts or omissions were sufficiently harmful to evidence deliberate indifference to serious medical needs. *Estelle*, 429 U.S. at 105-106. *Estelle* specifically precluded extending eighth amendment

coverage to claims of medical malpractice where the physician has been simply negligent in diagnosing or treating a medical condition. An inmate in that case has the remedy of bringing a common law action for medical malpractice, just like an ordinary citizen. An eighth amendment prison conditions case simply requires more than a common law tort.

C. The Present Threshold Requirement.

The threshold test of an eighth amendment claim turns on whether an inmate has suffered an objectively serious deprivation. *Wilson*, 111 S. Ct. at 2324. If there were no such requirement, an inmate could proceed with an eighth amendment claim on the mere theory that a use of force inflicted minimal physical or mental pain. *Id.*; *Rhodes*, 452 U.S. at 348-49. In the context of *all* eighth amendment claims, petitioner may be correct in stating that actual physical injury is not necessarily a prerequisite to an actionable deprivation. However, all eighth amendment claims are not at issue in this case. Here, the issue is whether a plaintiff must demonstrate a significant injury to state a viable 42 U.S.C. § 1983 claim for a single incident excessive use of force claim arising in a prison security context. Although it is not easy to imagine such a case where there is no physical injury, the Fifth Circuit has not ruled out the possibility. *See, e.g., Johnson v. Morel*, 876 F.2d 477, 480 n.1 (5th Cir. 1989) (en banc) ("We think it unlikely that such a significant injury will be caused by unnecessary force without significant *physical* injury. However, on the facts before us here, we do not decide whether a significant but non-physical injury would be legally significant.").

The states do not seek to contest petitioner's statement that significant excruciating pain may be

inflicted without leaving visible traces. For example, the deliberate administration of electric shock to sensitive areas of the body is torture, plain and simple, and, therefore, cruel and unusual punishment. But the "annals of torture and coercive interrogation"[5] occur in a significantly different context than the incident presently under scrutiny. Two characteristics of this type of prison disturbance are that the incident is almost always isolated and of a spontaneous nature. Also typically, the actors have sharply divergent stories.[6] In fact, the only objective evidence which does not depend to a large extent on any actor's version of the events is medical evidence of the extent of the inmate's injuries, if any.

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[5] *See* Petitioner's Brief at 7.

[6] Usually the inmate claims that he did nothing to provoke an attack and is baffled by the fact that the officers felt the need to use force. The officers typically are involved in escorting the inmate from one area of the prison to another. The officers' claim generally is that the inmate resists the move or is otherwise recalcitrant (although in this case the officers deny that the incident ever took place). The most common reason officers are escorting prisoners in the first place is that the inmate in question resides in administrative segregation (that portion of the prison reserved for inmates with a history of discipline problems which threaten the safety of others), and needs to be removed to some other place, such as to another cell. In this case, the petitioner lived in that portion of the Louisiana State Penitentiary reserved for its most disruptive prisoners and the use of force was incidental to removing petitioner to another cell. Transcript at 97-98.

The typical prison use of force incident also takes place in the context of the need to "preserve internal order and discipline and to maintain internal security."[7] *Huguet*, 900 F.2d at 841, *quoting Whitley*, 106 S. Ct. at 1085.

> Prisons, by definition, are places of involuntary confinement of persons who have demonstrated proclivity for anti-social criminal, and often violent, conduct. Inmates have necessarily shown a lapse in ability to regulate their conduct in a way that reflects either a respect for law or an appreciation of the rights of others.

Hudson v. Palmer, 468 U.S. 517, 526 (1984). Thus, prison security measures must take into account this volatile community. "The management of a few guards of large numbers of prisoners, not usually the most gentle or tractable of men and women, may require and justify the occasional use of a degree of intentional force." *Johnson v. Glick*, 481 F.2d at 1033. Whether the use of force appears to have been justified, it may not be taken out of the context just described. Judge Friendly in *Johnson* reminds us that these incidents do not take place in a vacuum. *Id.* ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights.").

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[7] The most recent national survey of statistics on violent crime in prisons is illustrative of the security problems prison administrations face. The following numbers are the total for the years 1989 and 1990. Number of inmates killed by inmates: 105. Number of staff killed by inmates: 4. Number of assaults on staff by inmates: 10,827. Number of assaults on inmates by inmates: 22,697. Number of inmate suicides: 221. Total number of violent deaths: 335. *See* 14 CORRECTIONS COMPENDIUM 9 (June 1991).

The Fifth Circuit's *Huguet* standard is specifically designed to analyze a single incident use of force occurring in this prison context. The first three prongs of the test address the required threshold to an eighth amendment claim -- that the inmate's deprivation be sufficiently and objectively serious. Based on *Estelle*'s requirement of a serious illness or injury, the test requires a constitutionally significant injury. Prongs two and three take into account the context of the use of force and the competing institutional concerns of the prison's security and the inmate's own concerns. Only after the three elements of the threshold test have been met does the analysis shift to the fourth, subjective element. In answering the ultimate inquiry of whether the action constituted an unnecessary and wanton infliction of pain:

> [T]he trier of fact may draw inferences from its consideration of the first three elements. It must however, accord prison officials "wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain internal security."

Huguet, 900 F.2d at 841 (internal citations omitted).[8]

Certainly this test does not afford as much protection as the common law tort action for battery. This fact is, however, appropriate because the specific textual source of constitutional protection from physically intrusive governmental conduct in a prison context is the eighth amendment's cruel and unusual punishments clause. The quantum of injury required to trigger eighth amendment protection should be drawn

[8] *Graham v. Conner*, 109 S. Ct. at 1872-73 n.11 has effectively endorsed this test.

as brightly as possible consistent with the purpose of that amendment. However this degree of injury is quantified, clearly it must involve more than mere unreasonable force involving any injury whatsoever: it must involve cruel and unusual punishment. Removing the significant injury requirement would effectively remove the barrier between the common law tort actions for assault and battery and the violation of a constitutional right under § 1983. Battery makes actionable any intentional and unpermitted contact with a plaintiff.[9] A convicted prisoner has the avenue of bringing a claim for assault or battery in the state court; he is not without a remedy if he fails to state an eighth amendment violation. *Estelle* recognized the need to draw a clear line of demarcation between a claim for medical malpractice and a claim for violation of the cruel and unusual punishments clause.[10] The *Huguet* standard is entirely consonant with *Estelle*, as the eighth amendment simply does not protect against ordinary battery, just as it does not protect against ordinary medical malpractice.

[9] *See Johnson v. Glick*, 481 F.2d at 1033 ("the least touching of another in anger is a battery").

[10] *See Baker v. McCollan*, 443 U.S. 137, 146 (1979) ("Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law.").

II. THE FIFTH CIRCUIT'S *HUGUET* TEST MEETS CONSTITUTIONAL STANDARDS FOR A SPONTANEOUS SINGLE INCIDENT USE OF FORCE IN THE PRISON CONTEXT.

A. The Practical Implications

Petitioner concedes, as he must, that he suffered only minor injuries requiring no medical attention. While no government can condone unrestrained physical confrontations by prison guards, petitioner's claim does not pass constitutional muster under the cruel and unusual punishments clause. Petitioner suggests that it would cripple the eighth amendment if such brutal conduct went unpunished simply because a prisoner did not sustain a significant injury. He also suggests that the eighth amendment is the only restraint under which a correctional officer operates with prisoners. The eighth amendment, however, was not designed to prevent prison guard misconduct. It was designed to prevent cruel and unusual punishments. To the extent a prison guard uses excessive force, causes significant injury, and applies the force maliciously and sadistically for the very purpose of causing harm, the eighth amendment does provide a remedy to the prisoner. The suggestion that the significant injury requirement would produce an "open season" upon inmates violates reality. The average prison guard does not know about any "significant injury" requirement. The average prison guard is unlikely to have a comprehensive knowledge of this or any court's development of eighth amendment

standards.[11] The average prison guard knows, like any of us, that if he unjustifiably hurts someone, he is likely to get in trouble. Additionally, many if not most of the states' prisons are subject to remedial decrees which control uses of force far more specifically than the eighth amendment ever can. The state prisons have their own written policies and procedures which also specify when and how force may be used. Correctional officers know that they may be fired or otherwise disciplined over an excessive use of force found to violate their internal regulations. This is all that can be realistically expected of them.

Practically, the standard will affect the manner in which courts process prisoner use of force claims. The significant injury requirement allows courts to dispose of allegations of inmates who claim to have been assaulted by prison guards, where there is no serious harm. Often the only objective evidence available to a trier of fact in a use of force case is evidence of physical injury. It would, in fact, cripple the eighth amendment and unreasonably burden the federal judiciary to invoke a system which provides no objective method for winnowing the wheat from the chaff. The significant injury requirement has been very effective in the Fifth Circuit in helping to control its system-wide docket management problems.[12] This

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[11] One of the respondents even testified at trial that he was not familiar with the provisions of the eighth amendment itself. Joint App. at 24.

[12] *Pro se* prisoner civil rights suits comprise a significant percentage of the federal courts' civil docket. During the twelve month period ending March 31, 1991, prisoners filed 24,905 civil rights lawsuits in the federal courts nationwide. In the Fifth Circuit, where the largest number of *pro se* prisoner civil rights petitions were filed, the number was 3,355. In Texas, the number was 1,519. STATISTICAL TABLES FOR THE TWELVE MONTH PERIOD

(Footnote continued on next page)

system allows the meritorious claims to be heard. Under the current Fifth Circuit procedure, inmates now get more trials and more cases processed to settlement because there is a mechanism in place to separate out potentially meritorious claims.[13]

The Fifth Circuit has yet to rule out the potential for a non-physical significant injury. *See Johnson v. Morel*, *supra*. Petitioner cites to the *Hutto v. Finney*, 427 U.S. 678 (1978) opinion's description of the "Tucker Telephone" as an example of how pain may be delivered without causing visible physical injury. This example is simply inapposite. The "Tucker Telephone" is a method of torture, not an example of a spontaneous single incident use of force. The courts in the Fifth Circuit have yet to examine a fact situation where a prisoner has been tortured by a prison guard without causing some sort of significant physical injury. Yet, the *Huguet* test has plainly not foreclosed the possibility that a constitutional deprivation may be shown in such a context.

(Footnote continued from previous page)
ENDED MARCH 31, 1991, Administrative Office of the United States Courts. For the preceding year, the numbers are substantially the same.

[13] In 1986, the federal courts in Texas had an enormous backlog of about 2,000 *pro se* prisoner civil rights cases, many of which had been languishing for years. Primarily through the institution of evidentiary hearings conducted by federal judges at the prison units, along with the careful refinement of constitutional standards by the Fifth Circuit, the backlog no longer exists. The typical eighth amendment use of force case now takes about one year from the time the complaint is filed to termination of the litigation, as the district courts are able to keep current with their prisoner dockets.

B. The Test Must Address The Specific Type Of Conduct Against Which A Constitutional Violation Is Alleged.

Petitioner and his *amici* cite to many different cases from the different circuits as illustrative of allegations passing constitutional muster. Many of the cited cases are inapposite, however, because they occur in the fourth amendment context of an unreasonable seizure, not the eighth amendment context of cruel and unusual punishment. It goes without saying that those two very different constitutional provisions involve significantly different constitutional protections as they address, respectively, the rights of free world citizens and the rights of convicted felons. The eighth amendment is less protective than the fourth, *see Graham*, 109 S. Ct. at 1873, and the threshold for stating an eighth amendment claim is commensurately higher.

Petitioner cites other cases out of context. He attempts to use *Rhodes* for the proposition that a prisoner need not allege the existence or severity of an injury to prove cruel and unusual punishment. Petitioner is not entirely correct. The only issue disputed and decided in *Rhodes* was "whether the conditions were a sufficiently serious deprivation to violate the constitutional standard." *Wilson*, 111 S. Ct. at 2325 n.2. The *Rhodes* Court did not decide that the conditions constituted cruel and unusual punishment and in fact found no serious deprivation. Petitioner then cites to *Whitley* to support his position that the extent of injury is only relevant to the "ultimate inquiry." Thus, he argues, *Whitley* "contemplates that if there is a complete absence of justification for the use of force, the intentional application of any force, beyond *de minimis* force, is unconstitutional. The presence or

absence of justification is the test." Petitioner's Brief at 13. *Whitley*, however, does not stand for that proposition. Injury can still be an independent factor even as it sheds light on the other elements. Just because it is relevant to other factors does not mean that it is not a controlling issue in its own right. Moreover, the issue of significant injury did not even arise in *Whitley*; the inmate there received a shotgun blast in the leg. That, unquestionably, would constitute significant injury under the Fifth Circuit's *Huguet* test.

The context of the incident of which petitioner complains must inform the issue here. This case does not concern system wide injunctive relief designed to cure the deprivation of "life's basic necessities." It is not straight out of the "annals of torture and coercive interrogation." Officers did nct slip into petitioner's cell as he lay peacefully sleeping and brutally beat him up. This is a spontaneous single incident use of force case arising out of disciplinary camp housing as correctional officers moved a disruptive inmate from one portion of the prison to another. The test for an eighth amendment claim must be tailored to the specific conduct and context. The constitutional test has two parts: a sufficiently and objectively serious deprivation and a sufficiently culpable state of mind on the part of the officials. *Wilson*, *supra*. The first part is the threshold inquiry and the second part is the ultimate inquiry. The fundamental inquiries must be adapted to the context of the particular claim at issue. The Fifth Circuit *Huguet* standard accomplishes this objective.

C. The Threshold Inquiry Of An Eighth Amendment Claim Does Not Have As Its Basis The Unnecessary And Wanton Infliction Of Pain.

As stated, before a court addresses the ultimate inquiry of whether a prison official's conduct may be characterized as wanton, a prisoner must overcome the threshold test of showing a serious deprivation. *Wilson*, 111 S. Ct. at 2326 ("*Whitley* teaches that, assuming the conduct is harmful enough to satisfy the objective component of an Eighth Amendment claim [citation omitted], whether it can be characterized as `wanton' depends on the constraints facing the *official*"). The *Wilson* court took no issue, for example, with the court of appeals' dismissal of a number of plaintiff's claims there before it reached the state-of-mind issue, on the ground that they did not demonstrate a serious deprivation. *Id.* at 2327. Clearly, then, the wantonness of conduct has no relevance to the threshold issue because the answers to the two inquiries involve separate and distinct tests. *Wilson* never rejected the "suggestion that there is some required minimum threshold of physical injury" in single incident use of force cases. *See* Petitioner's Brief at 15. A prisoner must demonstrate objectively significant harm before addressing the ultimate issue of whether the conduct was an unnecessary and wanton infliction of pain.

III. THE FACTS OF THIS CASE WARRANT AFFIRMING THE COURT OF APPEALS.

The court of appeals found the facts sufficient to support a holding that no force was required, that the force used was objectively unreasonable and clearly excessive, and that it occasioned unnecessary and

wanton infliction of pain. Joint App. at 32. But because the magistrate characterized the harm as minor and requiring no medical attention, the court of appeals held that petitioner failed the significant injury prong of the *Huguet* test. Joint App. at 32-33 ("minor harms do not rise to constitutional proportions"). We must accept the trial court's findings that the injuries were minor because the trial court is the only court with fact jurisdiction. Petitioner cannot first ask us to accept the trial court's findings on the other three elements and then ask us to disregard its holding on the issue of harm. Petitioner concedes that *de minimis* injuries do not rise to constitutional proportions. He then suggests, however, that his minor injuries are significant injuries as a matter of law. Petitioner's Brief at 6 n.3 and 25 n.22. The lower courts are fully capable and charged with the responsibility of applying the Fifth Circuit's *Huguet* test and deciding the relative gravity of the factual assertions concerning injury. Because the petitioner failed to show an objectively significant injury, he failed to pass the threshold test. This court need not disturb the holding of the court of appeals.

CONCLUSION

For the above reasons, the State of Texas urges this Court to affirm the holding of the court of appeals.

Respectfully submitted,

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